IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3049 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M J PATEL

Versus

ASHWIN & CO.

Appearance:

1. Special Civil Application No. 3049 of 1990

MR Jal S Unwala for PK JANI for Petitioner No. 1

MR KS NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/08/2003

ORAL JUDGEMENT

1. The petitioner, who was a workman with the respondent-Company, raised an industrial dispute and the Ministry of Labour, Government of India, by an order

dated 7.6.1988 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad, which is at Annexure 'A'. The terms of Reference can be quoted thus:

"Whether the action of the management of M/s. Ashwin & Co., Arsodia in terminating the services of Shri M.J. Patel, ex-storekeeper w.e.f. 25.1.87 is legal and justified. If not, what relief the workman is entitled to?".

2. The Industrial Tribunal came to a conclusion that the Reference was not competent, and rejected the same by an award, Annexure 'B'.

3. The facts in brief can be stated thus:

3.1 The petitioner was working as Store Keeper with the respondent-Company. According to him, his services came to be terminated illegally with effect from 25th January 1987.

3.2 The case of the respondent, on the other hand, was that the services of the petitioner were never terminated but he had himself abandoned the service. It was alleged against the petitioner that he had indulged himself in several mal-practices and on being called upon to give explanation, he had stopped attending his duties.

3.3 At the conciliation proceedings, the respondent-Company refused to reinstate the workman on the ground that it was not a case of termination but abandonment. It was also contended that since the petitioner did not cooperate in holding of inquiry, the Company reserved its right to initiate inquiry and call for explanation from the petitioner, and as such, the Reference in the above terms came to be made.

4. The Tribunal observed that the real dispute between the parties is whether it was termination of services or abandonment of services. The Reference leaves no scope to examine the question of abandonment and without examining that aspect, question of termination cannot be adjudicated upon. This Court also finds that the real dispute between the parties is whether it is termination of services or abandonment of services, and that question has not been adjudicated upon by any competent authority. The Reference proceeds on the premise that it is a case of termination. The terms of Reference do not permit the Tribunal to go into the question whether it was a case of abandonment of services, and the real dispute, therefore, would remain

un-adjudicated and would proceed on a premises that it is a case of termination without any adjudication on that aspect. The Tribunal was, therefore, in the opinion of this Court, justified in holding that the Reference was incompetent.

4.1 Learned advocate Mr. Unwala appearing for the petitioner submitted that the workmen would suffer and, therefore, the matter may be remanded to the Tribunal for adjudication of the Reference made to it. He submitted that if the Tribunal finds that it is a case of abandonment, it can hold that termination was not legal or justified. It is not possible to accept this contention of Mr. Unwala for the reason that the Tribunal cannot examine the aspect of abandonment as it is not referred to it and therefore in the opinon of this Court the observation made by the Tribunal regarding the real dispute between the parties and the terms of reference are fully justified and legal. If this Court remands the matter to the Tribunal directing it to adjudicate upon the Reference, it would be a direction to the Tribunal to travel beyond the scope of Reference, which cannot be done by this Court, and, therefore, this prayer on behalf of the petitioner cannot be accepted.

5. Mr. Unwala, learned advocate for the petitioner heavily relied upon the decision of the Supreme Court in the case between Pottery Mazdoor Panchayat and the Perfect Pottery Co. Ltd., and others reported in 1979 (38) FLR 38 and submitted that in light of this judgment, the Tribunal could not have held that the Reference is bad, and could not have rejected the Reference.

5.1 Having gone through the judgment, in the opinion of this Court, this judgment cannot carry the case of the petitioner any further because in that case the Apex Court held that where the Reference is for deciding whether the proposed closure by the management is proper and justified or not, the Tribunal is not required to go into the question whether in fact the factory was closed or not because that would amount to travelling beyond the scope of Reference. In that case, the management itself had proposed the closure which was in dispute whereas in the instant case, the real nature of dispute and contentions between the parties go contrary to each other, viz. whether it is a case of termination or abandonment of service, and without examining the relevant contentions, the Reference cannot be adjudicated upon. The terms of Reference leave no scope for the Tribunal to examine the question of abandonment as raised by the employer. Therefore, this decision will not be

applicable to the facts of the present case.

6. Mr. Unwala was not able to point out any defect in the impugned award. He also could not explain or even suggest as to how the real dispute can be adjudicated upon without considering the case of abandonment of services vis-a-vis the case of termination as contended by rival sides. Under the circumstance, in the opinion of this court, no interference is called for in exercise of powers under Article 227 of the Constitution of India. The petition must fail, and is dismissed. Rule discharged. No order as to costs.

[A.L. DAVE, J.]
mathew